

ELIGIBILITY CHECKLIST FOR VACATING CONVICTIONS

- Only 1 misdemeanor conviction can be vacated and it must be the most recent conviction.
- More than 1 felony conviction can be vacated, but the most recent conviction must be vacated first and so on.

MISDEMEANOR CONVICTIONS [checked boxes = not eligible to vacate these convictions]

Check the box for any convictions the client has:

- Attempted rape in the third degree
- Attempted child molestation in the third degree
- Attempted rape of a child in the third degree
- Attempted voyeurism
- Attempted criminal trespass against children
- Custodial sexual misconduct in the second degree
- A conviction for obscenity, pornography or sexual exploitation of minors, including communicating with a minor for immoral purposes.
- Driving under the influence
- Physical control of vehicle under the influence

The convictions above cannot be vacated. See RCW 9.96.060; RCW 9A.44; RCW 9.68; RCW 9.68A.

Proceed if **none** of the boxes **above** have been checked. Check all that **apply** below:

- Are there criminal charges pending against the client in any court?
- Has the client vacated a conviction before?
- Has the client been convicted of anything else since this conviction?
- Is the client currently or within the **past 5 years** been restrained by a domestic violence protection order, a no-contact order, an anti-harassment order, or a civil restraining order which restrains one party from contacting the other party?
- Have less than **3 years** passed since the client completed the terms of the sentence, including legal financial obligations (LFOs)?
- Is the conviction for a domestic violence offense?
 - If so, are there previous domestic violence convictions?
 - Have less than **5 years** passed since the successful completion of the sentencing conditions, including LFOs and any treatment that was ordered?

If **any** of the above boxes are checked, then the client is **not** eligible to vacate the conviction. See RCW 9.96.060.

FELONY CONVICTIONS [checked boxes = not eligible to vacate these convictions]

Check the box if the client has a conviction for these RCWs that are defined on the attached page:

- A violent offense as defined in RCW 9.94A.030
- A crime against a person as defined in RCW 43.43.830
- Driving under the influence as defined by RCW 46.61.502(6)
- In physical control of a vehicle under the influence as defined by RCW 46.61.504(6)

The convictions above cannot be vacated.. See RCW 9.94A.640.

Proceed if **none** of the boxes **above** have been checked. Check all that **apply** below:

- Are there criminal charges pending against the client in any court?
- Has the client been convicted of anything else since being discharged under 9.94A.637?

If **any** of the boxes **above** are checked, then the client is **not** eligible to vacate the conviction.

CLASS B Felonies

Check all that **apply**.

Have less than 10 years passed since the person was discharged under 9.94A.637?

If the box **above** is checked, then the client is **not** eligible to vacate the conviction.

Common class B felonies that may be vacated: [circle items that apply]

<ul style="list-style-type: none"> • Malicious mischief first degree • Theft of motor vehicle • Taking motor vehicle without permission first degree • Possession stolen property first degree • Theft of firearm • Perjury first degree • Intimidating a witness • Intimidating a judge • Escape first degree • Trafficking stolen property first degree • Identity theft first degree • Vehicular assault (under "disregard for the safety of others" prong). 	<ul style="list-style-type: none"> • Residential burglary • Theft first degree • Theft of livestock first degree • Possession stolen firearm first degree • Organized retail theft (value over \$5,000) • Bribery • Bribing a witness • Intimidating a juror • Rendering criminal assistance first degree • Bail jumping (if underlying felony is Class A) • Criminal profiteering; money laundering • Unlawful possession of firearm first degree (felon in possession)
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This is not an exhaustive list.

CLASS C Felonies

Check all that **apply**.

If the felony is a Class C felony, have less than 5 years passed since the person was discharged under 9.94A.637?

If the box **above** is checked, then the client is **not** eligible to vacate the conviction.

Common class C felonies that may be vacated: [circle items that apply]

<ul style="list-style-type: none"> • voyeurism • malicious mischief second degree • vehicle prowling • theft second degree • possession stolen firearm • forgery • criminal impersonation • tampering with a witness • identity theft second degree • telephone harassment DV • reckless burning 	<ul style="list-style-type: none"> • unlawful discharge of laser • computer trespass • taking motor vehicle without permission second degree • possession stolen property second degree • organized retail theft (value less than \$5,000 and more than \$750) • perjury second degree • escape second degree • bail jumping (if underlying felony is Class B or C) • trafficking stolen property second degree • unlawful possession of firearm second degree
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This is not an exhaustive list.

How do I determine if the person has been discharged under 9.94A.637?

In order to be officially discharged, the client needs to have a Certificate of Discharge. This is usually submitted by DOC when the person completes the terms of his community supervision and has paid all the legal financial obligations. In the cases where there was no DOC supervision, the person has to contact the court directly to obtain the Certificate of Discharge. It's not sufficient to be "done" with your sentence and obligations; you need the Certificate of Discharge.

The waiting period starts from the date on the Certificate of Discharge.

LEGAL DEFINITIONS FOR ELIGIBILITY CHECKLIST

RCW 9.94.030 Violent offense means any of the following felonies:

- Any felony defined under any law as a class A felony or an attempt to commit a class A felony
- Criminal solicitation of or criminal conspiracy to commit a class A felony
- Manslaughter in the first degree
- Manslaughter in the second degree
- Indecent liberties if committed by forcible compulsion
- Kidnapping in the second degree
- Arson in the second degree
- Assault in the second degree
- Assault of a child in the second degree
- Extortion in the first degree
- Robbery in the second degree
- Drive-by shooting
- Vehicular assault, when caused by the operation or driving of a vehicle by a person while under the influence of intoxicating liquor or any drug or by the operation or driving of a vehicle in a reckless manner
- Vehicular homicide, when proximately caused by the driving of any vehicle by any person while under the influence of intoxicating liquor or any drug as defined by RCW [46.61.502](#), or by the operation of any vehicle in a reckless manner
- Any conviction for a felony offense in effect at any time prior to July 1, 1976, that is comparable to a felony classified as a violent offense in (a) of this subsection
- Any federal or out-of-state conviction for an offense that under the laws of this state would be a felony classified as a violent offense under (a) or (b) of this subsection

RCW 43.43.830 "Crime against children or other persons" means a conviction of any of the following offenses:

- Aggravated murder
- first or second degree murder
- first or second degree kidnapping
- first, second, or third degree assault
- first, second, or third degree assault of a child
- first, second, or third degree rape; first, second, or third degree rape of a child
- first or second degree robbery
- first degree arson
- first degree burglary
- first or second degree manslaughter
- first or second degree extortion
- indecent liberties
- incest
- vehicular homicide
- first degree promoting prostitution
- communication with a minor
- unlawful imprisonment
- simple assault
- sexual exploitation of minors
- first or second degree criminal mistreatment
- endangerment with a controlled substance
- child abuse or neglect as defined in RCW 26.44.020
- first or second degree custodial interference
- first or second degree custodial sexual misconduct
- malicious harassment
- first, second, or third degree child molestation
- first or second degree sexual misconduct with a minor

- *patronizing a juvenile prostitute; child abandonment; promoting pornography; selling or distributing erotic material to a minor; custodial assault; violation of child abuse restraining order; child buying or selling; prostitution; felony indecent exposure; criminal abandonment; or any of these crimes as they may be renamed in the future.

KCBA – Volunteer Legal Service

Eligibility Guidelines for Pro Bono Ongoing Representation

- Client's household income must be at 200% or less of the Federal Poverty Level
- Client's conviction/s must be within King County
- Client must be legally eligible to have their record vacated

If all of these boxes are checked, please refer the client to VLS for assistance getting their record vacated.

